IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION No. 2189 OF 2005
AND
CRIMINAL WRIT PETITION No. 2507 OF 2006

Ashok K. Shah & Ors. Petitioners

Vs.

The Commissioner of Police
and Ors. Respondents

Mr. J. S. Kini, advocate for the petitioners.

Mrs. A. S. Pai, APP for respondents.

CORAM : R.M.S. KHANDEPARKAR
AND
Mrs. V.K. TAHILRAMANI, JJ.

DATE : SEPTEMBER 27, 2007.

P.C. [PER R. M. S. KHANDEPARKARK,J.]

. Heard. In both these petitions, the petitioners are seeking relief in the nature of issuance of Writ of Mandamum, directing the respondents to register FIR in relation to the complaint filed by the petitioner on 12th August 2005 and complaint dated 11th October 2005 respectively. Undisputedly, the police authorities have registered FIR on 18th March 2005 as FIR No. 3 of 2005 at Juhu Police Station under Section 451, 337, 354 read with Section 34 of Indian Penal Code, against Suresh Patel, Prakash Desai, as

well as FIR No. 303 of 2005 on 10th August 2005 under 354, 114 of Indian Penal Code against Augustin Fernandis and Amarnath Sangram Yadav, in relation to the complaints lodged by the petitioners to the said police station. The main grievance of the petitioners appears to be that the respondents have not arrayed some of the persons, who are stated to be co-owners of the property in relation to which some dispute is pending between the parties, before the Civil Court as the accused persons in the said FIR. It is also the contention on behalf of the petitioners that some of the police officers are also involved, either in encouraging the alleged accused persons or in causing alleged harassment to the petitioner, and also that the police are not taking proper interest in the investigation in relation to the complaints lodged by the petitioners. The respondent on the other hand have stated that pursuant to the FIRs lodged in the matters, investigation was carried out and they have already filed charge sheet, based on the investigation. It was sought to be contended that on account of assault, the petitioner No.2 had suffered injuries and her condition was precarious and she had to be admitted in the hospital. The respondent on the other hand states that though petitioner No.2 was sought to be admitted in the

hospital, the medical reports of petitioner No.2 disclose that she did not suffer any injury. Our attention is drawn to the decision of the Apex Court in the matter of **Ramesh Kumari Vs. State (NCT of Delhi) and Others, [(2006) 1 Supreme Court Cases (Cri) 678]**, wherein it is observed that the Apex Court has held that the genuiness of the case of the complainant is immaterial for the purpose of registering the FIR and what is relevant is that the complaint should merely disclose allegation of commission of cognizable offence by the accused. Referring to the said decision, it is sought to be argued on behalf of the petitioner that since the grievance made by the petitioner disclosed the cognizable offence, it was the duty of the police authorities to register the FIR against the persons named as accused by the petitioner and accordingly to conduct the investigation. According to the learned counsel for the petitioner, the police authorities refused to include the names of the persons, identified by the complainant, on the ground that they are the persons of good character.

2. At the outset, it is to be noted that the Apex Court in **Aleque Padmse Vs. UOI, [2007 AIR S.C. 783]**, it has been clearly ruled that in case police authority

refuses to register the complaint as FIR in terms of Section 154 of Criminal Procedure Code, various options are open to the complainant, including the remedy by way of approaching the Magistrate with the complaint under S. 190, and also requesting the Magistrate for necessary directions in terms of S. 156(3) of Cr.P.C. Undisputedly, in this case, the petitioner had never approached the Magistrate for such relief in the matter. It is pertinent to note that respondent in their affidavit had catogorically stated that on completion of the investigation, they have already filed the charge sheet. Being so, even the remedy under Section 173(8) Cr.P.C. is available to the petitioner. It is also pertinent to note that no satisfactory explanation could be given as to why the petitioners could not approach the Magistrate for necessary direction in terms of S. 173(8) Cr.P. C. It is also not clear as to what prevented the petitioners from approaching the Magistrate in terms of Section 156(3) Cr. P.C. Since alternative efficacious remedies are available to the petitioner, we do not find this to be a fit case for interference in writ jurisdiction. This is not a case where there is an abuse of powers by the police authorities as such or total failure on the part of police machinary to take

note of the cognizance, and hence no interference is called for. Perusal of record disclose that police had taken cognizance of the complaints filed by the complainant, and had investigated in the matter and filed the charge sheet. In case the petitioners find any lapse on the part of the police authority in investigation, nothing prevents them from approaching the Magistrate for necessary order under S. 173(8) of the Code of Criminal Procedure. Being so, in our considered opinion, there is no case made out for exercise of writ jurisdiction or issue of writ of Mandamus, as prayed for. Hence, the petitions fail and are hereby rejected.

Sd/-
[R.M.S. KHANDEPARKAR, J.]

Sd/-
[Smt. V. K. TAHILRAMANI,J.]